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DISTRICT IV

January 15, 2016

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You are hereby notified that the Court has entered the following opinion and order:

2015AP251-CRNM State of Wisconsin v. Charles W. Keys (L.C. # 2014CF283)

Before Kloppenburg, P.J., Lundsten and Sherman, JJ.

Attorney Andrew Hinkel, appointed counsel for Charles Keys, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2013-14)¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there would be arguable merit to a challenge to Keys' plea or sentencing. Keys was sent a copy of the report, but has not filed a response. Upon independently reviewing the entire record, as well as the no-

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Accordingly, we affirm.

Keys was charged with multiple criminal offenses based on incidents between Keys and the alleged victims, R.W. and C.A. Pursuant to a plea agreement, Keys pled guilty to misdemeanor battery, domestic abuse, and misdemeanor bail jumping, and the remaining charges were dismissed and read in for sentencing purposes. The court withheld sentence and imposed two years of probation with sixty days of conditional jail time.

First, the no-merit report addresses whether there would be arguable merit to a challenge to the validity of Keys' plea. A post-sentencing motion for plea withdrawal must establish that plea withdrawal is necessary to correct a manifest injustice, such as a plea that was not knowing, intelligent, and voluntary. *State v. Brown*, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906. Here, the circuit court conducted a plea colloquy that, together with the plea questionnaire and waiver of rights form that Keys signed, satisfied the court's mandatory duties to personally address Keys and determine information such as Keys' understanding of the nature of the charges and the range of punishments he faced, the constitutional rights he waived by entering a plea, and the direct consequences of the plea.² See *State v. Hoppe*, 2009 WI 41, ¶¶18-30, 317 Wis. 2d 161, 765 N.W.2d 794. There is no indication of any other basis for plea withdrawal.

² No-merit counsel notes that, during the plea colloquy, the circuit court did not give Keys the deportation warning required under WIS. STAT. § 971.08(c). Counsel informs us, however, that there would be no arguable merit to a claim for plea withdrawal based on the lack of the deportation warning because Keys could not show that he is likely to be deported, and Keys has not filed a response disputing that point. See *State v. Douangmala*, 2002 WI 62, ¶46, 253 Wis. 2d 173, 646 N.W.2d 1 (a postconviction motion for plea withdrawal based on the court's failure to give the required deportation warning must demonstrate that the plea is likely to result in the defendant's deportation).

Accordingly, we agree with counsel's assessment that a challenge to Keys' plea would lack arguable merit.

Next, the no-merit report addresses whether there would be arguable merit to a challenge to the court's sentencing decision. A challenge to a circuit court's exercise of its sentencing discretion must overcome our presumption that the court reasonably exercised its discretion. *State v. Ramuta*, 2003 WI App 80, ¶23, 261 Wis. 2d 784, 661 N.W.2d 483. Here, the court explained that it considered facts relevant to the standard sentencing factors and objectives, including the seriousness of the offense, Keys' character and criminal history, and the need for rehabilitation and to protect the public. *See State v. Gallion*, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. The court followed the parties' joint sentencing recommendation to withhold sentence and impose two years of probation, and followed the State's recommendation to impose sixty days of conditional jail time. We discern no erroneous exercise of the court's sentencing discretion.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

IT IS ORDERED that the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Hinkel is relieved of any further representation of Keys in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals